IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3642 of 2001

with

CIVIL APPLICATION NO.2598 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

UDAYSINH SOMABHAI CHAVDA

Appearance:

1. Special Civil Application No. 3642 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR SJ SHAH for Respondent No. 1

MR DIPAK R DAVE for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/04/2002

ORAL JUDGEMENT

#. Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner - Corporation and learned

Deepak Dave, learned advocate for respondent workman.

#. In the present petition, the petitioner Corporation has challenged the award passed by the labour court, Baroda in Reference No.744 / 1998 dated 29th February, 2000, wherein the labour court has granted reinstatement with continuity of service with 70 % backwages of the interim period and also awarded punishment of stoppage of two increments with cumulative effect. This Court has issued RULE and notice as to interim relief by order dated 13th June, 2001.

#. Learned advocate Mr.H.S.Munshaw for petitioner Corporation has submitted that the labour court has committed gross error in granting relief of reinstatement with 70 % backwages to the respondent workman when charge of dishonesty and misappropriation is found to be proved. Mr.Munshaw has also submitted that past record wherein 12 defaults of serious nature have been committed by the workman which was not properly appreciated by the labour court. He has further submitted that the past record was produced by the Corporation before the labour court but the labour court has come to the conclusion that past record is not relevant as for the past misconducts, adequate punishments had already imposed on the workman concerned and even otherwise, it should not have taken into account for present dismissal, otherwise, it amounts to double punishment to the respondent workman. Mr.Munshaw has also submitted that the labour court has granted 70 % backwages which amounts to premium to such erring delinquent employee who has committed misconduct relating to dishonesty and misappropriation while recovering the far and not issuing the tickets and therefore, it adversely affected the corpus of the petitioner Corporation and such employee cannot be reinstated in service because the corporation has lost confidence from the respondent workman. Mr.Munshaw also submits that misconduct of recovering fare and not issuing tickets is apparently found from the record and therefore, the error committed by the labour court while granting the relief in favour of the respondent workman requires to be interfered with by this Court in the interest of justice.

#. Learned advocate Mr.Deepak Dave for respondent workman has submitted that the respondent workman was working as Conductor and at the time of checking of his bus, the respondent workman was doing road booking and when he was about to issue the tickets, his bus was checked and therefore, tickets could not have been issued and as such, there was no mala fide intention to

misappropriate the amount of fare and he has already explained said incident before the competent authority but said explanation has not been believed by the competent authority. Mr.Dave has also submitted that past record was not supplied to the respondent workman along with show cause notice and therefore, same cannot be considered against the respondent workman. He has also submitted that the labour court has rightly come to the conclusion that at the time of checking, the conductor was doing road booking and charge of dishonesty is not found to have proved, according to the finding given by the labour court because independent witness, in other words, no passenger was examined in departmental inquiry. Therefore, Mr.Dave submits that the labour court has imposed punishment of stoppage of two increments with cumulative effect looking to the gravity of the misconduct, so also denied 30 % backwages and this can be considered to be sufficient punishment on the respondent workman in light of misconduct which is proved before the labour court. Therefore, no error has been committed by the labour court while passing such award and no interference of this Court is called for under Article 226 and 227 of the Constitution.

#. I have considered submissions made by learned advocates for the parties. The respondent workman was working as Conductor and on 27th August, 1996 when he was on route from Ushanagar to Harni, his bus was checked at Sangam Corss Road and at that time, seven passengers were found without tickets though fare was collected from the concerned passengers. Before the labour court, statement of claim was filed vide Exh.4 and reply was filed by the petitioner Corporation vide Exh.13. Thereafter, before the labour court, the petitioner Corporation has produced documents vide Exh.12 and the respondent workman has produced documents vide Exh.5. The petitioner Corporation has produced all the papers relating to the inquiry as well as default card of the respondent work. Thereafter, the respondent workman was examined vide Exh.14 and ultimately the labour court has come to the conclusion that looking to the evidence which was led in the departmental inquiry and considering the Purshis vide Exh.8 submitted by the respondent workman that he is not challenging the legality and validity of the departmental inquiry and ultimately the labour court has granted reinstatement with continuity of service and 70 % backwages of the interim period.

#. I have perused the entire award passed by the labour court. The labour court has considered the evidence which was led in departmental inquiry and come to the

conclusion that the respondent workman who has deposed before the labour court, has made clear statement that at the time of checking on 27th August, 1996, the conductor was doing road booking and he has not committed any misconduct of dishonesty. However, the petitioner Corporation has not examined any passenger as independent witness and the petitioner Corporation has not led any oral evidence before the labour court. The past record which was considered by the labour court, was not disclosed to the respondent workman at the time when the show cause notice was served. Therefore, the labour court has granted reinstatement. The labour court has exercised discretionary powers under Section 11-A of the I.D.Act, 1947 and also come to the conclusion that defence of the respondent workman is believable and he was doing road booking and this aspect was disclosed at the time of checking as well as even in the departmental inquiry so also before the labour court. Therefore, the respondent workman had no any malafide intention of misappropriating the fund of petitioner Corporation as alleged. Ultimately, the labour court has considered that the punishment of dismissal for such misconduct is harsh and unjustified. Therefore, the labour court has granted reinstatement with continuity of service. So far direction issued by the labour court granting reinstatement with continuity of service and imposing penalty of stoppage of two increments with cumulative effect, the award in question passed by the labour court concerned, is just and proper and the labour court has rightly exercised the discretionary powers while coming to the conclusion that punishment is harsh and disproportionate to the misconduct committed by the respondent workman relying on the defence of the respondent workman.

#. Now the question about grant of 70 % backwages in favour of the respondent workman. According to my opinion, the labour court has relied upon defence of the respondent workman that after dismissal, he was earning Rs.400-500 per month while doing miscellaneous work. Despite of this clear admission of the respondent workman, the labour court has granted 70 % backwages of the interim period to the respondent workman. Fact remains that allegation made against the respondent workman to recover the fare from seven passengers and not issued the tickets though defence may be considered but ultimately the respondent workman had recovered the fare upto time of checking and not issued the tickets. More so, he was having bad past record wherefrom 12 misconducts reflected to have registered against the workman and out of which, some of them, are of similar

nature. Therefore, view taken by the labour court that past record cannot be taken into consideration, is erroneous but same is required to be taken against the workman when it was produced by the labour court. In the present case, past record was produced by the petitioner Corporation and therefore, according to my opinion, grant of 70 % backwages to such employee who in past involved in such similar kind of misconduct, can be said to be premium to such employee. Therefore, according to my opinion, direction which has been issued by the labour court granting 70 % backwages to the respondent workman is erroneous and contrary to settled principles of law and hence, direction in respect of grant of backwages requires to be quashed and set aside.

#. Accordingly, present petition is partly allowed. The award in question passed by the labour court concerned in Reference No.744 / 1998 dated 29th February, 2000 is modified to the extent that direction issued by the labour court granting 70 % backwages in favour of the respondent workman is quashed and set aside but the direction granting reinstatement with continuity of service and punishment of stoppage of two increments with cumulative effect inflicted on workman is not disturbed by this Court and the same will remain unaltered. Accordingly, present petition stands partly allowed. Rule is made absolute to the extent indicated with no order as to costs.

#. Learned advocate Mr.Deepak Dave for respondent workman submits that no interim relief has been granted by this Court while issuing RULE and despite of this fact, the respondent workman has not been reinstated in service by the petitioner Corporation though Civil Application No.2598 of 2002 is filed by the workman. It is also submitted that the workman has also filed affidavit as required under Section 17-B of the I.D. Act before the petitioner Corporation but as such, no wages under Section 17-B of the Act, has been paid by the petitioner Corporation to the workman despite of specific order of this Court passed on date 29th February, 2000. Therefore, he prays for issuance of some suitable directions on petitioner Corporation to implement the award in question and the consequential relief thereof, within some reasonable time. Considering the request of learned advocate Mr.Dave for respondent workman, it is directed to the petitioner Corporation to reinstate the workman within period of one month from the date of receiving a copy of this order. The petitioner Corporation is further directed to pay full wages from 1st March, 2000 till the date of actual reinstatement

after adjusting the amount paid to the workman under Section 17-B of the I.D.Act, if any, within period of two months from the date of receiving a copy of this order.

In view of above directions, Civil Application No.2598 of 2002 stands disposed of accordingly.

Date : 3-4-2002 [H.K.Rathod, J.]

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